



*Serving the Iowa Legislature*

# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

August 24, 2011

2011 Interim No. 2

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*Iowa Legislative Interim Calendar and Briefing* is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

## August 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## September 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Tuesday, September 13, 2011

### **Administrative Rules Review Committee**

9:00 a.m., Room 116, Statehouse

Wednesday, September 14, 2011

### **Fiscal Committee of the Legislative Council**

10:00 a.m., Room 116, Statehouse

# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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### STUDIES COMMITTEE OF THE LEGISLATIVE COUNCIL

August 16, 2011

**Chairperson:** Senator Amanda Ragan

**Vice Chairperson:** Speaker Kraig Paulsen

**Overview.** The Studies Committee considered mandates and proposals for 2011 interim studies contained in legislation and other requests, and recommended the actions listed in this briefing. The recommendations were approved by the Legislative Council.

**Studies Deadline.** The deadline for completion of the 2011 interim studies is November 28, 2011.

**2011 Interim Studies.** Studies were authorized for the 2011 interim with the indicated number of members and meeting days to address the following topics:

#### Statutory Committees

**Legislative Tax Expenditure Committee** (Code Sections 2.45(5) and 2.48)

**Charge:** The Committee is a permanent body under the Legislative Council. Duties include approving annual estimates of the cost of tax expenditures by December 15 each year, and performing a scheduled review of specified tax credits so that each credit is reviewed at least every five years. The first scheduled review is in 2011.

**Members:** 5 Senate/5 House

**Meeting Days:** 1

**State Government Efficiency Review Committee** (Code Section 2.69)

**Charge:** The Committee is a permanent legislative committee with five Senate and five House members appointed by legislative leaders at the beginning of a new General Assembly. The Committee is required to meet as directed by the Legislative Council, at least every two years, to review state government organization and efficiency options and receive state government efficiency suggestions offered by the public and public employees. The first report is due January 2013.

**Members:** 5 Senate/5 House

**Meeting Days:** 1

**Public Retirement Systems Committee** (Code Section 97D.4)

**Charge:** The Committee is a permanent legislative committee that is required to review and evaluate all public retirement systems in place in Iowa, including the Iowa Public Employees' Retirement System (IPERS), the Municipal Fire and Police Retirement System of Iowa (Code Chapter 411), the Department of Public Safety Peace Officers' Retirement System (PORS), and the Judicial Retirement System. The Committee typically meets during the legislative interim of odd-numbered years.

**Members:** 5 Senate/5 House

**Meeting Days:** 2

**State Fish and Game Protection Fund Study Committee** (2011 Iowa Acts, S.F. 509, Section 18)

**Charge:** Review the expenditures from the State Fish and Game Protection Fund by the Department of Natural Resources.

**Members:** 3 Senate/3 House

**Meeting Days:** 1

#### Other Interim Studies

**Inmate Geriatric and Psychiatric Patients Study Committee** (2011 Iowa Acts, S.F. 510, Section 24)

**Charge:** Examine treatment and placement options for inmate geriatric and psychiatric patients who are under the care, custody, and control of the state, or for patients who are otherwise housed at the Iowa Medical and Classification Center at Oakdale or other correctional facilities for geriatric or psychiatric treatment. A related study by the departments of Corrections, Human Services, Inspections and Appeals, and Public Health required by 2011 Iowa Acts, S.F. 510, Section 25, is to be submitted to the Study Committee by November 15, 2011.

**Members:** 5 Senate/5 House

**Meeting Days:** 2

**Mental Health and Disability Services Study Committee** (2011 Iowa Acts, S.F. 525, Section 1)

**Charge:** Review publicly supported mental health and disability services. The Study Committee shall closely engage with, monitor, and propose legislation concerning the recommendations and proposals developed by the workgroups implemented by the Department of Human Services (DHS) and other bodies addressed by 2011 Iowa

# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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*(Studies Committee of the Legislative Council continued from Page 2)*

Acts, S.F. 525. The legislators serving on the interim committee and other interested legislators are authorized to participate in the meetings of the workgroups and subcommittees addressed by the legislation. In addition to the workgroup recommendations, the Study Committee shall address property tax issues, devise a means of ensuring the state maintains its funding commitments for the redesigned services system, recommend revisions in the requirements for mental health professionals who are engaged in the involuntary commitment and examination processes under Code Chapter 229, recommend revisions to the Code Chapter 230A amendments contained in S.F. 525 as necessary to conform with the system redesign proposed by the Study Committee, develop proposed legislation for amending Code references to mental retardation to instead refer to intellectual disabilities, and consider issues posed by the July 1, 2013, repeals of county disability services administration and funding provisions in 2011 Iowa Acts, S.F. 209. In addressing the repeal provisions, the Study Committee shall consider all funding sources for replacing the county authority to levy for adult disability services.

**Members:** 6 Senate/6 House

**Meeting Days:** 3

### **Lake Macbride Study Committee**

**Charge:** Review requirements and make recommendations pertaining to the use of motorboats on Lake Macbride.

**Members:** 3 Senate/3 House

**Meeting Days:** 1

*LSA Contacts:* John Pollak, Legal Services, (515) 281-3818; Tim McDermott, Legal Services, (515) 281-8090.

*Internet Page:* <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=49>

## **SERVICE COMMITTEE OF THE LEGISLATIVE COUNCIL**

August 16, 2011

**Chairperson:** Senator Michael E. Gronstal

**Vice Chairperson:** Speaker Kraig Paulsen

**Overview.** The Committee received information and made recommendations concerning the nonpartisan Legislative Services Agency and the Office of the Citizens' Aide/Ombudsman that were approved by the Legislative Council.

**Personnel Reports and Budgets.** The nonpartisan legislative agency personnel reports were received and any promotions were recommended for approval, along with a recommendation for approval of the agency budgets for FY 2011-2012.

*LSA Contacts:* Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566; Ed Cook, Legal Services, (515) 281-3994.

*Internet Page:* <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=48>

## **LEGISLATIVE COUNCIL**

August 16, 2011

**Chairperson:** Speaker Kraig Paulsen

**Vice Chairperson:** Senator Michael E. Gronstal

**Committees.** The Legislative Council approved recommendations reported by the Service Committee and Studies Committee, and received an annual report from the International Relations Committee.

See briefings in this issue for the Service and Studies Committees.

*LSA Contacts:* Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566; Susan Crowley, Legal Services, (515) 281-3430.

*Internet Page:* <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=43>

## **ADMINISTRATIVE RULES REVIEW COMMITTEE**

August 16 & 17, 2011

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

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## INFORMATION REGARDING RECENT ACTIVITIES

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*(Administrative Rules Review Committee continued from Page 3)*

### **HUMAN SERVICES DEPARTMENT, *Medicaid Filings*, EMERGENCY ADOPTION.**

**Background.** Each year the Department of Human Services (DHS) is authorized in statute to adopt a variety of changes to the Medicaid program on an “emergency” basis, with the proviso that the changes be reviewed by the Administrative Rules Review Committee before they are effective. The 2011 legislation, H. F. 649, stated in part:

- 20. a. The department may implement cost containment strategies recommended by the governor, and may adopt emergency rules for such implementation.*
- b. The department shall not implement the cost containment strategy to require a primary care referral for the provision of chiropractic services.*

Due to the extended legislative session, the timeframe for the drafting and review of these Medicaid rules was significantly restricted; 13 rule filings were sent to the Committee for review at the August meeting. Most have a September 1 effective date. These filings are summarized as follows:

1. Chapter 75, Medicaid. Allow liens to recover Medicaid expenses for services involving malpractice.
2. Chapter 78, Medicaid. Eliminate coverage for weight-loss drugs and limit coverage of drugs for symptomatic relief of cough and cold.
3. Chapter 78, Medicaid. Restrict coverage of orthodontia for children.
4. Chapter 78, Medicaid. Limit payment for durable equipment under an HCBS waiver to the amount paid for fee-for-service Medicaid.
5. Chapter 79, Medicaid. Increase reimbursement rates for home- and community-based waiver services.
6. Chapter 79, Medicaid. Increase pharmacy dispensing fee.
7. Chapter 79, Medicaid. Increase reimbursement rates for non-state-owned psychiatric medical institutions for children.
8. Chapter 79, Medicaid. Eliminate graduate medical education payments for out-of-state hospitals.
9. Chapter 79, Medicaid. Eliminate payment for treatment of a hospital-acquired condition.
10. Chapter 79, Medicaid. Reduce physician payment for services provided in a facility setting.
11. Chapter 79, Medicaid. Implement emergency room copayment and reduce Medicaid payment when service is nonemergency and patient is not referred by another provider.
12. Chapter 80, Medicaid. Require new forms for paper billing of Medicare crossover claims.
13. Chapter 81, Medicaid. Update procedures for federal nursing facility preadmission screening and evaluation of patients with mental retardation or mental illness.

A department representative discussed each of the rule filings in turn.

**Commentary.** Regarding the rule filing on coverage of orthodontia for children, Committee members expressed an interest in working with the department to find alternative sources of savings in the dental area in the future. It was estimated that 1,500 children would be affected by the coverage restriction. A representative of the Iowa Dental Association expressed concern over these funding cuts, and explained that the procedures in question are needed care and not merely cosmetic, and save money in the long run by reducing the need for future dental care.

For the filing increasing the reimbursement rates for home- and community-based waiver services, the department representative explained that the filing restores a previous cut in funding for these services. An industry representative expressed concern that the filing restores the funding to the capped rate in place in 2009. This would eliminate any rate changes made since that time, and would represent a significant financial hardship for some providers. Committee members asked why this issue had not been raised previously when the language in question was being discussed during the 2011 Legislative Session. It was thought at the time that the language would provide for the necessary funds. The industry representative suggested that the language used did not provide for the outcome desired by the Legislature. Committee members remained open to making further changes in the 2012 Legislative Session.

For the filing dealing with copayments for emergency room services, the department representative explained that the copayment would be \$3. Committee members sought clarification as to how that number was chosen, and whether it could be changed. The department representative explained that \$3 is the maximum amount that could be feasibly imposed under federal regulations. Committee members asked how the copayment would be collected and if it in fact would be collected. The department representative explained that the fee would be a debt owed to the provider, and it would be the provider's responsibility to collect it.

**Action.** No action taken.

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*(Administrative Rules Review Committee continued from Page 4)*

### **MEDICINE BOARD, *Continuing Education and Training*, 7/13/11 IAB, ARC 9601B, FILED.**

**Background.** This rule updates language, eliminates redundancies, and establishes continuing education requirements for chronic pain management and end-of-life care. The requirements are for two hours of training in a five-year period. The rules do not require additional hours of training, but add these two subjects to the subjects required to be covered during a physician's training hours.

**Commentary.** Committee members stated it was their understanding that certain public comments received by the board had not been accounted for in this rulemaking. A board representative explained that some in the medical community oppose imposition of any further mandatory training requirements. The board, however, feels that both of these issues, pain management and end-of-life care, are significant enough to merit this rare increase in training requirements. The board representative stated there are numerous opportunities for physicians to meet these requirements, and that the requirements could be met without leaving the state, including via web-based resources. The board representative also explained that a physician who does not fulfill the requirement would not be suspended, but would only be given a warning and possibly face a fine if they were to be overly delinquent.

Some Committee members expressed concern that the imposition of this requirement might presage imposition of further, more onerous requirements in the years to come; others felt that this requirement is much needed. In response to a Committee member's question, the board representative explained that this requirement would not apply to physicians who do not provide direct patient care such as radiologists and pathologists. Industry representatives echoed public comments made by their associations that this training should not be mandated, as physicians should be allowed to decide for themselves what training subjects are appropriate. They further asserted that the board has presented no evidence that chronic pain management and end-of-life care are problematic issues in Iowa. The director of the Governor's Office of Drug Control Policy, who recently announced a task force on prescription drug abuse, expressed his support for this requirement, and stated he felt it would be helpful in support of the mission of the task force.

**Action.** No action taken.

### **NURSING BOARD, *Organization of the Board*, 7/27/11 IAB, ARC 9621B, NOTICE.**

**Background.** In this rulemaking, the Board of Nursing proposes to revise its rules of procedure. One change would eliminate any reference to "Robert's Rules of Order, Revised"; Robert's is the traditional authority used by state boards and commissions to govern meetings. This action means that the board would operate with only limited rules of procedure, set out in chapter one, along with the requirements of Code Chapter 21, Iowa's Open Meeting Law. Issues that exceed the scope of those skeletal procedures would be dealt with on an ad hoc basis.

**Commentary.** A board representative explained the rulemaking, including the elimination of Robert's Rules of Order. The representative explained that the changes were made at the recommendation of the board's attorney, who felt it would reduce the risk of future litigation based only on procedural shortcomings. The representative stated that other boards such as the Medicine Board and the Dental Board do not use Robert's either. Committee members asked if new procedures would be codified in place of Robert's, and the board representative responded that she was unsure. A stakeholder expressed opposition to this rule given the uncertainty it might create. Committee members expressed strong support for the use of Robert's by all boards and commissions and expressed concern about the implications of a board or commission operating without formal rules of procedure. Committee members urged the board to reconsider this rulemaking.

**Action.** No action taken.

### **NATURAL RESOURCES DEPARTMENT, *Dove Season*, SPECIAL REVIEW, FILED EMERGENCY AFTER NOTICE.**

**Background.** 2011 Iowa Acts, S. F. 464, added the mourning dove to the list of game birds or animals for which the Natural Resource Commission may establish a hunting season. With this specific statutory authorization, in May, the department proposed a 70-day season with a 30-bird possession limit; the notice did not propose to regulate method of take. The department conducted a public hearing at which many participants called for a requirement for the exclusive use of nontoxic shot. On adoption, the Natural Resource Commission did adopt a nontoxic shot requirement.

**Commentary.** At the August Committee meeting department representatives and stakeholders contended that the use of lead shot poses a health threat to humans eating doves and to scavenging animals who ingest the lead pellets. It was noted that most states that allow dove hunting have some type of requirement for nontoxic shot. Proponents of

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*(Administrative Rules Review Committee continued from Page 5)*

lead shot disputed allegations that lead shot poses any environmental threat and contended that nontoxic shot was an additional and unnecessary expense.

Committee members and the Governor's representative expressed concern that the nontoxic shot requirement did not appear in the notice of intended action. Department representatives contended that the requirement was added in response to significant public comment. Discussion centered on the extent to which a notice of intended action can be modified on final adoption. Both the Committee and the department agreed on the general principle that even substantial changes can be made to a notice of intended action as long as those changes are within the scope of the original notice and a logical outgrowth of the comment received on the proposal. However, the Committee and the department disagreed on whether the nontoxic shot requirement was within the scope of the original notice.

Both Committee members and the Governor's representative felt that a decision on nontoxic shot should be made by the Legislature. Committee members also noted that a nontoxic shot requirement was debated by the House of Representatives and was specifically voted down.

**Action.** The Committee imposed a session delay on that portion of the rule which imposes a nontoxic shot requirement. If the General Assembly does not take action to nullify this provision, it will automatically go into effect before the fall 2012 mourning dove hunting season.

### **PROFESSIONAL LICENSURE DIVISION, *Licensee Discipline: Effect of Deferred Conviction or Sentence, Various Licensing Boards.***

**Background.** Iowa's licensing boards are adopting new disciplinary rules which would allow the boards to consider deferred judgments and deferred sentences as factors in licensee disciplinary matters. At a previous meeting, a representative from the Attorney General, appearing on behalf of the division explained that these rules are needed in light of an Iowa Supreme Court decision, and that it is necessary for deferred judgments and deferred sentences to be explicitly set out as permissible factors for consideration in order for licensing boards to be able to consider them when making disciplinary decisions. The representative also noted that the number of deferred judgments has been increasing in recent years.

**Commentary.** A board representative noted that the underlying crime must be related to the practice of a particular profession under a case-by-case determination by the licensing board. Regarding deferred convictions, Committee members expressed concern about the fairness of a person being denied a license without having been convicted of a crime. Members expressed concern that a person could plead guilty to a charge in order to get a deferred sentence, not knowing that plea could result in suspension or revocation of the person's license. Members also expressed concern over the use of the generic term "crime", which is not defined in the Code of Iowa. Members instead suggested the term "public offense".

**Action.** No action taken.

**Next Meeting.** The next regular Committee meeting will be held in Room 116, Statehouse, on Tuesday, September 13, 2011, beginning at 9:00 a.m.

*LSA Staff:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*Contact Persons:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

*Internet Page:* <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53>

## **MENTAL HEALTH AND DISABILITY SERVICES REDESIGN**

**Background.** 2011 Iowa Acts, S.F. 525 requires the DHS to implement various workgroups to develop recommendations and proposals for the redesign of publicly funded mental health and disabilities services in the state. The workgroup results will be considered by a legislative interim committee authorized by the Legislative Council for this purpose and to address funding and other related public policy matters for recommendation to the General Assembly for the 2012 Legislative Session. The legislation provides a target date for the redesign provisions to be fully implemented beginning July 1, 2013. The workgroups began meeting in mid-August. Various legislators and legislative staff will be monitoring the workgroups.

**Workgroups—Meetings.** With one exception, the redesign workgroups will make preliminary reports to the legislative interim committee in October and final recommendations in December 2011. The following workgroups have been implemented by DHS, all are scheduled to meet from 10 to 3 on their meeting days:

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*(Mental Health and Disability Services Redesign continued from Page 6)*

- Adult Mental Health System Redesign Workgroup (MH) Meetings on 8/23, Des Moines United Way Campus; 9/6, Johnston Library; 9/20, Des Moines United Way Campus; 10/4, Des Moines United Way Campus; 10/18, Des Moines United Way Campus
- Best Practices and Program for Persons with Brain Injury Workgroup (BI) Meetings on 8/23, Polk County River Place; 9/6, State Historical Building; 9/20, Des Moines United Way Campus; 10/11, Des Moines United Way Campus; 10/25, Polk County River Place
- Adult Intellectual and Developmental Disability System Redesign Workgroup (IDDD) Meetings on 8/23, Des Moines United Way Campus; 9/6, Des Moines United Way Campus; 9/20, Des Moines United Way Campus; 10/4, Des Moines United Way Campus; 10/18, Des Moines United Way Campus
- Childrens Disability Services Workgroup (Children) (This workgroup will meet for two years.) Meetings on 8/30, Polk County River Place; 9/13, West Des Moines Public Library; 9/27, Des Moines United Way Campus; 10/11, Des Moines United Way Campus; 10/25, Des Moines United Way Campus
- Regionalization Workgroup (Regional) Meetings on 8/30, Polk County River Place; 9/13, State Historical Building; 9/27, Des Moines United Way Campus; 10/11, Des Moines United Way Campus; 10/25, Des Moines United Way Campus
- Judicial Branch and DHS Workgroup (Judicial-DHS) Meetings on 8/30, Judicial Branch Building; 9/15, Judicial Branch Building; 10/6, Judicial Branch Building; 10/20, Judicial Branch Building

Internet Page: <http://www.dhs.iowa.gov/Partners/MHDSRedesign.html>

LSA Monitor: John Pollak, Legal Services, (515) 281-3818.

### MENTAL HEALTH AND DISABILITY SERVICES REDESIGN—JUDICIAL-DHS WORKGROUP

August 18, 2011

**Background.** Pursuant to 2011 Iowa Acts, Chapter 121, Section 2, the Judicial Branch and DHS have been authorized to continue the workgroup implemented during the 2010 Legislative Session (2010 Iowa Acts, Chapter 1192, Section 24, subsection 2), to examine various issues relating to improving the processes for involuntary commitment for chronic substance abuse under Code Chapter 125 and for serious mental illness under Code Chapter 229. The Judicial-DHS Workgroup is required to coordinate its efforts with the Mental Health and Disability Services Interim Study Committee (2011 Iowa Acts, Chapter 121, Section 1) and other workgroups designated pursuant to this same legislation. This workgroup is required to submit preliminary recommendations to the legislative interim committee in October and a final report on or before December 9, 2011.

**Summary.** In this meeting, the first of six scheduled meetings, the workgroup heard presentations on and discussed transportation and prescreening issues in the court committal process. DHS Director Charles Palmer spoke about the work of the Regional Workgroup and noted that the Regional Workgroup is working on criteria that would define a region, taking into account such factors as efficiencies, economies of scale, workforce shortages, and access to services. He emphasized the Judicial-DHS Workgroup can best inform the Regional Workgroup by making a determination as to whether the issues before the Judicial-DHS Workgroup should be considered core services (what every Iowan should have a right to, to be determined by certain eligibility criteria such as diagnostic or financial need, or both). Workgroup members agreed that both transportation and prescreening services in the court committal process should be considered core services and, within this framework, included recommendations relating to qualifications of mental health prescreeners and consistency and efficiency in the prescreening process including documentation, referral, and follow-up. It was also recommended that a region designate a transportation coordinator to assign a sheriff or sheriff's designee to provide transportation for a patient in a safe manner, taking into account the best interests of the patient.

**Next Meeting.** The next meeting will be on Tuesday, August 30, 2011, at 10:00 a.m., Judicial Branch Building, Room 1, 1111 E. Court Ave, Des Moines.

Internet Page: <http://www.dhs.iowa.gov/Partners/MHDSRedesign.html>

LSA Monitor: Rachele Hjelmaas, Legal Services, (515) 281-8127.



# BRIEFINGS

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### LEGAL UPDATE

**Purpose.** A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

### LEGAL UPDATE—CREDIT FOR TIME SERVED WHILE ON PROBATION

Filed by the Iowa Supreme Court

July 29, 2011

Anderson v. State

No. 09-0507

[http://www.iowacourts.gov/Supreme\\_Court/Recent\\_Opinions/20110729/09-0507.pdf](http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20110729/09-0507.pdf)

**Factual Background.** Michael Anderson pled guilty to two counts of enticing a minor away, a class "D" felony. The district court granted Anderson a suspended sentence and placed him on probation for five years on each count. As part of his probation, Anderson was incarcerated at the Marshalltown Residential Facility and ordered to undergo sex offender treatment at the facility, but he was allowed to leave the facility for employment purposes. Anderson was subsequently released from the facility subject to other additional conditions of probation, including electronic monitoring and home supervision. Anderson was required to maintain employment, was allowed one hour after work to run errands, but otherwise needed permission from a probation officer to leave his residence, and was prohibited from having any contact with persons under the age of 17, but had unlimited access to television, internet, and video games at his residence. Subsequently, it was discovered Anderson had contact with a minor 16 years of age through the internet and that the minor had been at his residence numerous times. Based upon the evidence gathered the district court revoked Anderson's probation and reinstated his prison term on the two counts of enticing a minor away. The district court granted Anderson credit on his sentence for the time served in the Marshalltown Residential Facility but did not grant Anderson credit on his sentence for the time he lived at his residence while under electronic monitoring and supervision.

**Issue.** Whether the defendant in this case should receive credit against his prison sentence for the time he lived at his residence while under electronic monitoring and home supervision.

**Analysis.** The Iowa Supreme Court (Court) held that Anderson is entitled to receive credit against his prison sentence for the time he lived at his residence while on probation and under electronic monitoring and home supervision. The state argued the General Assembly intended that credit against a sentence should apply to only the time served by a defendant in a jail-like setting under Code Section 903A.5(1). The Court concluded Code Section 907.3(3) unambiguously entitles Anderson to credit on his sentence for the time served while on probation, and under electronic monitoring and home supervision. The state further argued that under the defendant's interpretation of Code Section 907.3(3), a defendant could be entitled to credit against a sentence for any probation sanction including unsupervised sanctions such as fines and community service. The Court concluded Code Sections 907.3(3) and 901B.1 should be read together, and noted the language in Code Section 907.3(3) restricts credit against sentences to the sentences that require supervision or services, thus a person receiving an unsupervised sanction is not entitled to receive credit against such a sentence. The state also argued it would be absurd to allow credits against a sentence while the defendant was in the process of committing further sex offenses and victimizing minors. The Court concluded the "absurd results doctrine" should be used sparingly because of the risk the judiciary will override the General Assembly on the basis of speculation that the General Assembly could not have meant what it said. The Court further emphasized it will not ignore legislative language merely because it leads to a result that seems contrary to the expectations of the Court.

*LSA Staff:* Joe McEniry, LSA Counsel, (515) 281-3189.

### LEGAL UPDATE—PROPERTY TAX CLASSIFICATION—MULTIPLE HOUSING COOPERATIVES

Filed by the Iowa Supreme Court

July 29, 2011

Krupp Place 1 Co-op, Inc. v. Board of Review of Jasper County

No. 09-0654

[http://www.iowacourts.gov/Supreme\\_Court/Recent\\_Opinions/20110729/09-0654.pdf](http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20110729/09-0654.pdf)



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*(Legal Update—Property Tax Classification—Multiple Housing Cooperatives continued from Page 8)*

**Background Facts and Procedure.** Krupp Place 1 Co-op, Inc. and Krupp Place 2 Co-op, Inc., are both corporations organized as multiple housing cooperatives under Code Chapter 499A. Each cooperative holds title to real estate improved with a building containing apartment units. Larry and Connie Krupp, however, were the only members of the cooperatives, each with a 50 percent interest in each cooperative. As members of the cooperatives, Larry and Connie Krupp then entered into proprietary leases with the cooperatives requiring them to pay rent. The Krupps never resided in the cooperative properties. Instead, they subleased the apartments to subtenants for residential purposes. The Krupps use the net rental income from subtenants to pay the rent they owe to the cooperatives under the proprietary leases. The cooperatives in turn use the rent paid by the Krupps to meet cooperative expenses.

In 2008, the Jasper County Assessor classified the cooperatives' real estate as commercial real estate for property tax purposes. The cooperatives appealed the classification and assessments to the Board of Review of Jasper County. The Board of Review adjusted the assessed value of the properties but did not alter its classification of the properties as commercial. The cooperatives appealed the board's decision to the district court. Following a stipulation of facts, the district court issued its decision on a motion for summary judgment by affirming the classification of the real estate as commercial. Despite recognizing that under Code Section 441.21(11), "all land and buildings of multiple housing cooperatives organized under chapter 499A" are to be classified as residential property for tax purposes, the district court concluded the Krupps had not complied with "the spirit of the law." The district court stated that like any corporation, the corporate entity may be disregarded and the corporate veil pierced if the entity is a sham or if corporate formalities are not followed.

The cooperatives filed a combined motion for amendment and enlargement of findings and for a new trial. The cooperatives asserted that compliance with corporate formalities was not in dispute as no evidence was presented on this issue. As a result, the cooperatives argued the court's previous piercing of the corporate veil was erroneous. The cooperatives further reiterated that because all of the statutory prerequisites of Code Chapter 441 were met, the court had no choice but to follow the legislative directive that residential cooperative property be classified as residential for property tax purposes. In light of the additional motion and filings, the district court concluded the cooperatives had followed all proper formalities as prescribed by Iowa law. Accordingly, the district court reversed its prior ruling and concluded the cooperative real estate should properly be classified as residential. The Board of Review appealed. The Iowa Court of Appeals affirmed the district court. The Iowa Supreme Court (Court) granted further review.

**Issue on Appeal.** Whether two multiple housing cooperatives organized under Code Chapter 499A were properly classified as residential real estate for property tax purposes.

**Analysis.** Ordinarily, multiunit apartment buildings are classified as commercial property, thereby subjecting the property to commercial property tax rates. However, Code Chapter 499A allows two or more adult persons to organize themselves into a residential cooperative. The real estate of such cooperatives is classified for property tax purposes as residential under Code Section 441.21(11).

Both parties agreed that the cooperatives were properly organized under Code Chapter 499A. The Board of Review, however, requested the Court to look beyond the organizational formalities and to the actual operation of the property in classifying the property. According to the Board of Review, the Court should utilize the "actual use" test to inquire if the property's operation is solely to circumvent current tax classifications and to avail themselves of reduced tax assessments. The cooperatives relied on the explicit language of Code Section 441.21(11), which provides that the term "residential property" includes "all land and buildings of multiple housing cooperatives organized under chapter 499A," in arguing that the property is entitled to be classified as residential property as a matter of law.

The Court held that Code Section 441.21(11) does not contemplate an "actual use" test and determined that the only fact finding required under Code Section 441.21(11) is whether the property is owned by an entity organized under Code Chapter 499A.

The Court also rejected the Board of Review's suggestion that the Court may pierce the corporate veil if the corporation is operated as a mere sham by pointing out that there is no evidence in the record that the cooperatives are making any profit in this case. Additionally, under Code Chapter 499A, the cooperatives must operate on a nonprofit basis. Nothing in the chapter prohibits a member from leasing out a unit or units with desirable economic terms.

**Conclusion.** The Court affirmed the decisions of the district court and the court of appeals classifying the real estate owned by the multiple housing cooperatives as residential property for property tax purposes.

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